

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16493
[Redacted])	
Petitioners.)	DECISION
)	
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the staff of the Idaho State Tax Commission (Commission) dated February 4, 2002, asserting additional liabilities for Idaho income tax and interest in the total amounts of \$1,091, \$1,016, \$2,583, and \$2,398 for 1997, 1998, 1999, and 2000, respectively.

[Redacted] is a dentist. He was retained by a firm which provided dental services to the [Redacted]. He was not treated as an employee by this firm. The petitioners filed their original income tax returns accordingly, claiming business expenses to offset a portion of the compensation paid to D[Redacted].

Some time later, [Redacted] initiated an action with [Redacted] seeking to be treated as an employee. He was successful in this effort. Accordingly, [Redacted] issued a report which was agreed to by the petitioners. This report, in part, disallowed certain claimed business expense deductions in accordance with [Redacted] being treated as an employee.

The Tax Commission staff received a copy of the report [Redacted] A Notice of Deficiency Determination was issued to the petitioners reflecting these adjustments. The petitioners filed this appeal objecting to these adjustments.

Idaho Code § 63-3002 stated:

Declaration of intent. It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal

Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States. (Underlining added.)

[Redacted] actively pursued treatment as an employee for federal purposes. Now that he has successfully obtained this treatment, he wishes to not be so treated for Idaho income tax purposes. Idaho Code § 63-3002 requires the same income to be reported to Idaho [Redacted] except as otherwise provided in the Idaho law. Further, Idaho Code § 63-3018 specifically provides that the term "employee" means employee as defined [Redacted]. The [Redacted] uses the common law test to determine a person's employment status. The petitioners have pointed to no provision of Idaho law providing for the disparate Idaho treatment.

[Redacted] successfully sought the [Redacted] treatment bringing about this adjustment. Idaho Code §§ 63-3002 and 63-3018 require the result provided in the Notice of Deficiency Determination. The petitioners have provided no contrary authority.

The petitioners contend that the state of Idaho is barred by quasi estoppel from contending that [Redacted] is an employee. The petitioners base this argument on a 1998 decision of the Fourth Judicial District of the State of Idaho finding that [Redacted] was not entitled to employee benefits

pursuant to Chapter 35 of Title 67, Idaho Code. Counsel for the petitioners contends that, "[h]e [[Redacted]] was determined by a state court ruling not to be an employee under the usual common law rules – the very rules that apply [Redacted], as adopted by I.C. § 63-3018.” In reviewing the decision of the court, the Commission finds that the common law tests were *not* applied in determining that [Redacted] was not an employee of the [Redacted] for employee benefit purposes. In fact, it would appear that there might well have been ample room for the court to have found that [Redacted] was an employee under common law standards, but not pursuant to Chapter 35 of Title 67, Idaho Code. The court stated the following:

In this case, no employee position was ever created for a dentist employee for the Department. As a result, it would violate state law to hire or pay the Plaintiff as a state employee to perform dental services for the Department. Therefore, the Plaintiff is not entitled to receive the employee benefits he seeks to recover, whether the claim is alleged as breach of contract or quantum meruit. *Barth v. Canyon County*, 128 Idaho 707, 918 P.2d 576 (1996); *Clayton v. Barnes*, 52 Idaho 418, 16 P.2d 1056 (1932).

Oyler v. The Idaho Department of Correction, Ada County District Court, Case No. CV-OC-97-01701*D, Decision and Order on Motions for Summary Judgment at p. 4 (June 19, 1998).

A person may be an employee for one purpose and a subcontractor for another. *Merchants Home Delivery Service, Inc. v. NLRB*, 580 F.2d 966, 974 (9th Cir. 1970); *Carnation Company v. NLRB*, 429 F.2d 1130, 1134 (1970) (9th Cir. 1978).

Therefore, the Commission finds that quasi estoppel does not prevent the clear language of Idaho's income tax law from producing the result reflected in the notice of deficiency determination.

WHEREFORE, the Notice of Deficiency Determination dated February 4, 2002, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (calculated to May 15, 2003):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1997	\$ 804	\$ 40	\$302	\$1,146
1998	793	40	237	1,070
1999	2,138	107	482	2,727
2000	2,126	106	310	<u>2,542</u>
			TOTAL DUE	<u>\$7,485</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
